

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) NO: 14-CV-1025 RB-SMV  
 )  
THE CITY OF ALBUQUERQUE, )  
 )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE ROBERT C. BRACK  
UNITED STATES DISTRICT JUDGE  
THURSDAY, JANUARY 18, 2018  
11:10 A.M.  
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

(Proceedings recorded by machine shorthand and  
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11 and

12 SHAUN WILLOUGHBY, President APOA

13 Also Present:

14 DR. JAMES D. GINGER  
15 Court-appointed Independent Monitor

16 DEPUTY CHIEF ROGER BAÑEZ  
17 DEPUTY CHIEF HAROLD MEDINA  
18 DEPUTY CHIEF ERIC GARCIA  
19 Albuquerque Police Department

20 DIONNA K. FORD, Law clerk

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1 (On the Record at 11:10 A.M.)

2 COURT CLERK: This is Jessica from Judge Brack's  
3 Chambers. Can you please announce who is on the line?

4 MS. MARTINEZ: For the Government, this is  
5 Elizabeth Martinez, Luis Saucedo, Stephen Ryals, Corey  
6 Sanders, Ruth Keegan, and our assistant, Alyssa Ferda,  
7 F-E-R-D-A.

8 MR. SCHMEHL: And on behalf of the City of  
9 Albuquerque, we have here in the room -- I'm Assistant City  
10 Attorney Jeramy Schmehl. We have Assistant City Attorney  
11 Samantha Hults -- acting City Attorney Samantha Hults, my  
12 apologies. We also have Deputy Chief Roger Bañez, Deputy  
13 Chief Harold Medina, Deputy Chief Eric Garcia, and then  
14 also...

15 MR. D'AMATO: On behalf of the Albuquerque Police  
16 Officers Association, John D'Amato and Shaun Willoughby.  
17 Good morning.

18 DR. GINGER: And for the monitoring team, Jim  
19 Ginger, Your Honor.

20 MR. WALZ: And Jerry Walz. I'm also attending at  
21 a different location. I'm an independent attorney on  
22 contract with the City of Albuquerque.

23 THE COURT: Thank you, everyone, for your  
24 appearances this morning.

25 This is *United States of America versus City of*

1     *Albuquerque*, our monthly status conference. I know that the  
2     parties have developed an agenda for this morning's session.  
3     I'm glad for us to begin with Item Number 1 on the agenda.

4             Dr. Ginger, are you in the midst of your site  
5     visit?

6             DR. GINGER: I am, Your Honor. And for the  
7     Court's information, things are going, at this point, quite  
8     well, I think.

9             THE COURT: Well, that's good news. So the site  
10    visit continues through tomorrow; is that right?

11            DR. GINGER: It continues through the end of the  
12    week. And we'll be following up with some fairly intensive  
13    phone and video conferencing in the coming weeks to make  
14    sure that this transition goes smoothly.

15            THE COURT: All right. Anything else on the site  
16    team update, then?

17            DR. GINGER: I think that's the most of it right  
18    now, Your Honor. One of the other issues that we're working  
19    on we're going to cover in the agenda, anyway, and that's  
20    the transition process for moving from the old APD  
21    administration to the new and insuring continuity of the  
22    monitoring process and maintaining forward momentum.

23            THE COURT: And at what point in the agenda are  
24    we going to discuss that?

25            DR. GINGER: It's the first item, Your Honor.

1 I'm ready, if you are.

2 THE COURT: I am. Let's go.

3 DR. GINGER: I submitted a proposal to the  
4 parties a couple of weeks ago on a way forward, given the  
5 change of administration and, as a parenthetical, I think, a  
6 highly positive change in attitude of current command staff  
7 compared to what we had before. The one thing that concerns  
8 me is that this new command staff is new. They're  
9 confronting these problems for the first time. And yet we  
10 still have, you know, requirements of the CASA that need to  
11 be met. And toward that purpose, I proposed to the parties  
12 a way forward that will allow us to, I think, more easily  
13 blend in the new command staff and bring them up to speed so  
14 that we can get continued forward momentum.

15 We've had, quite honestly, I'll characterize it  
16 as a "sea change" in relationships between the monitoring  
17 team and APD command staff over the past three days. One  
18 thing that has concerned me for quite some time: We knew  
19 this change was probably coming; we started trying to  
20 prepare for it probably three months ago, I guess, in terms  
21 of conceptually outlining a way forward with this. The  
22 issue that we have is, just like with the original APD  
23 command staff, there's a huge lift involved in these  
24 processes in bringing the new command staff up to speed with  
25 the requirements of the CASA, the modalities of the

1 monitor's evaluation plan and assessment plans, and a great  
2 deal of technical assistance that was given to the old APD  
3 to sort of bring them up to speed on what we expected in  
4 terms of our methodology, in terms of how we would identify  
5 compliance and those sorts of nuts-and-bolts issues. This  
6 new administration, obviously, has not had benefit of that,  
7 so what we need to do is, in effect, restart the process  
8 with this new administration. And I submitted a proposal to  
9 the parties -- and we're going through it right now. It  
10 will eventually come to the Court for the Court's  
11 approval -- that allows us to provide up-front technical  
12 assistance, just like we did with the old APD, to this new  
13 command staff and bring them up to speed and get them to the  
14 point that they're ready to begin, you know, early  
15 implementation processes, so that we don't get much of a  
16 stutter in the compliance efforts.

17 I talked about that process with Chief Geier and  
18 his command staff and they are amenable to it. We have a  
19 proposal under development right now to go to the Court in  
20 writing in the form of a motion, currently scheduled due  
21 date by 31 January, that outlines that process in detail.  
22 But basically what it involves is a change in the monitoring  
23 process and a switch back to a focus of technical assistance  
24 and training up the new command staff and how this process  
25 will move forward.

1           At the same time, we don't want to leave,  
2   obviously, the Court out of the loop. So I'm proposing we  
3   schedule two mini reports, M-I-N-I reports, that will be  
4   provided to the Court. Hopefully, that will keep the Court  
5   comfortable that we're moving forward, that we haven't lost  
6   any more time that is absolutely necessary just to bring the  
7   command staff up to speed. So those reports would be coming  
8   to report -- coming to the Court during the next -- I guess  
9   the first one will go in -- I'm sorry, I'm lost in my notes.  
10   First one will go in...March 31<sup>st</sup>; the second one, May --  
11   thank you -- May 31<sup>st</sup>. And that will keep -- basically be  
12   a set of truncated monitor's reports that will bring the  
13   Court up to speed of the monitoring team's view of APD's  
14   status and process during that transition period.

15           We also will need to upgrade substantially our  
16   technical assistance wing of the project because, obviously,  
17   the new command staff did not have the benefit of the  
18   massive amounts of technical assistance we provided to the  
19   old APD in the early months of this -- initial months of  
20   this project. So what we're trying to do is, is to remove a  
21   little bit of the reporting burden from the process and  
22   transition that to technical assistance provided to APD  
23   command on what the CASA is, what it requires, how the  
24   monitoring team works, how we measure things, and what our  
25   expectations are of APD command.

1           So that -- you know, that's sort of a transition  
2     in the workload. What we're proposing to do, so that we  
3     don't bust the City's budget, is to back off of the  
4     reporting requirements and spin up substantially new  
5     technical assistance procedures that will get the new APD  
6     sort of up to speed and ready to roll. That will come -- as  
7     I say, that will come to the Court in a detailed written  
8     motion. And we hope, with the approval of that, the  
9     monitoring team and the City command staff are ready to move  
10    forward with the new phase.

11           THE COURT: Well, let me -- that looks to have  
12    been Item Number 3 on the agenda that I have, this update on  
13    the way forward.

14           Mr. Saucedo, let me hear from you, please, about  
15    the Government's feel.

16           MR. SAUCEDO: Yes, Your Honor. Good morning.  
17    This is Luis Saucedo. The monitor has proposed -- and you  
18    are correct, Your Honor, that this is Item Number 3 on the  
19    agenda. And what the monitor has proposed to the parties is  
20    that, in lieu of submitting Independent Monitor Report  
21    Number 7 that would cover August 2017 to January 2018 -- but  
22    instead of that comprehensive report that covers -- that  
23    we've been getting every six months, that he, instead, file  
24    two -- these two mini reports on March 31<sup>st</sup> and May 31<sup>st</sup>  
25    of 2018. And that after that period, the monitor would

1 resume with IMR-8. And IMR-8 would then cover -- excuse me,  
2 here it is -- February through July of 2018.

3 The United States is supportive of this proposal  
4 because of the work that will be needed in the next few  
5 months. The parties are working collaboratively to hit the  
6 reset button here. And what the City is undertaking in the  
7 next several months is revamping its use-of-force process.  
8 And we think that the entire process and the goals we've set  
9 out as part of this CASA will be furthered if we suspend and  
10 have a shift in the monitoring approach from one of simply  
11 assessing and reporting to doing more technical assistance  
12 up front by Dr. Ginger and his team.

13 And so, as we've laid out in Item Number 3, the  
14 parties would be submitting to the Court for its  
15 consideration a proposal where we'll set out clear dates on  
16 when these reports are due and when we would resume the  
17 monitoring reports for IMR-8.

18 THE COURT: Thank you.

19 Mr. Schmehl, is the City on board with this  
20 proposed change?

21 MR. SCHMEHL: Good morning, Your Honor. Yes, the  
22 City is. I think it's a very welcome opportunity for the  
23 City to hit the reset button to address the sort of hand  
24 that's been dealt the new administration. I think there are  
25 a lot of things going on. As Mr. Saucedo pointed out, we

1 have the revamp of the use-of-force process, the  
2 investigative process, and also the compliance plan, which  
3 represents a change in mentality and an opportunity for this  
4 project to be thoughtfully approached rather than thrust  
5 upon the City and the Department, because I believe that  
6 that was the challenge from before. So yes, absolutely, the  
7 City is fully on board with this and embraces the  
8 opportunity to move forward in a much more positive fashion.

9 THE COURT: Well, that certainly sounds good to  
10 me, Mr. Schmehl.

11 And I want to get back to Item Number 2, the  
12 compliance plan, in just a moment, but Mr. D'Amato, what  
13 does APOA think about this revamp?

14 MR. D'AMATO: We're excited and concur with the  
15 direction the City and DOJ have taken. Dr. Ginger spoke of  
16 a "sea change." It is apparent at almost every level, Your  
17 Honor, and we're excited. We're looking forward to some  
18 successes here.

19 THE COURT: Well, thank you. And I will  
20 anticipate and look forward to the motion, I guess. You-all  
21 still think it will be filed by the end of the month?

22 MR. SAUCEDO: Yes, Your Honor. At this point --

23 MR. D'AMATO: Yes, Your Honor.

24 MR. SAUCEDO: And the motion would address the  
25 specific paragraphs of the CASA that would need to be

1 modified in order to put into motion the proposal that  
2 Dr. Ginger has provided the parties.

3 THE COURT: Well, I'll look forward to seeing it.  
4 And to the extent that it is positive change and well  
5 received by all of the stakeholders, I doubt I'm going to  
6 throw a wrench in the works.

7 I do have a concern, though, on the proposed  
8 agenda that I'm looking at. I see the reference to the mini  
9 reports that are scheduled for, as you say, March 31<sup>st</sup> and  
10 May 31<sup>st</sup>, in lieu of IMR-7, but the prospect of putting  
11 off the next outcome assessment for an entire year, that  
12 concerns me. And I guess you're going to inform that  
13 concern some more this morning as we talk about the  
14 compliance plan and the audit and where we are with the  
15 monitor's budget, but you know, very recently, I've heard  
16 "we've extended a significant part of the budget and more  
17 than you might have expected, given the amount of progress,"  
18 but when we're talking about delaying things, the outcome  
19 assessment, you know, until a year from now, that's got me  
20 concerned, so I need to have that informed a little bit.

21 Let's talk about Item 2, the update on the  
22 compliance plan. Mr. Schmehl, I -- well, give me an update.  
23 And I see that there's going to be a request for an  
24 extension there, too.

25 MR. SCHMEHL: Yes, Your Honor. Thank you. So I

1 think it's important to understand what's happened since  
2 December the 1<sup>st</sup>. There has been an obvious change in  
3 leadership with the Department. And with that change, as I  
4 stated earlier, is a change in mentality and approach to  
5 this project and the reform of the Albuquerque Police  
6 Department. And that's been driven by all the new  
7 leadership. So since that point, we've come together. And  
8 obviously, at the November hearing, you sent a clear message  
9 that there needed to be a plan, responsible people, and  
10 deliverables, and deadlines.

11 And so that conversation started with the City  
12 and the Department's new leadership and the City's new  
13 leadership right away. And the first realization we came to  
14 was that there wasn't any thoughtful planning or a  
15 thoughtful approach to accomplishing the objectives in the  
16 settlement agreement. I think that's most -- most evidenced  
17 or most obvious by the fact that there is not an  
18 implementation unit to even address the challenges raised by  
19 the settlement agreement. There wasn't a multi-disciplinary  
20 approach to any of those issues or concerns.

21 And so I explain that simply because that was  
22 shocking -- quite frankly, was shocking because the  
23 mentality was simply to look at tasks when they were thrust  
24 upon the City and the Department and then really sort of  
25 fumble around, and nothing was done, unfortunately. I can

1 say that -- hopefully, not too bluntly -- that was pretty  
2 much the culture and the approach to reform previously.

3 Now, the new administration, with the City and  
4 with the Department, the approach is that this is our job.  
5 And this is our -- these are our tasks to accomplish. The  
6 monitor's reports are not Earth-ending events because,  
7 moving forward between monitor's reports and with this  
8 compliance plan, we'll be making reform from the inside out.  
9 And so I think that's important to understand. And those  
10 are the -- not "challenges." The challenge is the culture  
11 and changing that culture, because that mindset of having to  
12 do those things that are just appearing every once in a  
13 while has led to conversations at the Department level, the  
14 City level that really show the mindset that has to be  
15 changed, along with just the tasks that have to be  
16 identified, thoughtfully addressed through timely -- you  
17 know, timely deadlines and actual evidence of reform. I  
18 know Dr. Ginger, very much so, stresses the fact that you  
19 can have all of these things on paper, but if there isn't a  
20 measurable outcome, then it was all for naught.

21 So I think that the extension is informed by that  
22 perspective. The extension is informed by that challenge  
23 that the City administration and the Department is  
24 confronted with. And so we're asking for that six-week  
25 extension so that a good compliance plan, which will be the

1 bedrock of reform moving forward, can be presented to the  
2 parties on March the 1<sup>st</sup> as a draft, with comments back from  
3 the parties and the monitor -- I'm sorry, the parties and  
4 the monitor with that draft on March 1, and comments back on  
5 March 7, with filing March 14<sup>th</sup>. And Your Honor, you can  
6 expect to see a motion requesting that extension filed by  
7 January the 29<sup>th</sup>.

8 So that's the basis for the extension. That's  
9 the changed timeline for the draft, the comments, and the  
10 filing. And that's the City's logic and approach moving  
11 forward. And we hope it's well taken. We believe it's well  
12 taken by the parties and the monitor, and we hope it's well  
13 taken by you, Your Honor.

14 THE COURT: Thank you, Mr. Schmehl. And I guess  
15 I just need to hear, then, consecutively from Mr. Saucedo,  
16 Mr. D'Amato, and Dr. Ginger about your interest in and your  
17 perceived need for the extension. You know what? I'm -- I  
18 heard Dr. Ginger say a "sea change." I wrote it down. I  
19 made a note about that. And I know that, you know, the team  
20 involved on the City's side of things changed dramatically  
21 December the 1<sup>st</sup>. And obviously, to me, there's going to be  
22 some coming to speed. And it sounds like some of that has  
23 already happened. And I really do appreciate the -- the  
24 speed with which you've tried to close that gap and  
25 recognize the challenges and the problems.

1           Mr. Saucedo, do you think that the six-week  
2       extension is necessary and a positive part of this process?

3           MR. SAUCEDO: Your Honor, yes, the United States  
4       believes the six-week extension is necessary. The parties  
5       spent, with Dr. Ginger, two days back in December looking  
6       comprehensively at the reform process. And it was apparent  
7       to everyone that the City had renewed its commitment to  
8       developing its own capacity to grow and to learn from each  
9       of the monitoring reports and to get to the point where  
10      they're learning from their own processes, even before  
11      Dr. Ginger prepares his reports.

12           To get there, the City does need to put together  
13      a comprehensive, well-thought-out compliance plan. And as  
14      part of that, the City has agreed to present a concrete  
15      proposal to revamp the use-of-force process, which is a  
16      cornerstone of this agreement.

17           What we saw, in many ways, was that the City, in  
18      the past, had just added to the process through policy and  
19      through other directives. And it -- what we ended up with  
20      was an unwieldily, convoluted process that really is taking  
21      its toll on the people who have to implement this every  
22      single day on the street. We're talking about the  
23      rank-and-file officers and the supervisors that were having  
24      to implement something that -- well, that went beyond the  
25      CASA.

1           So part of the work that needs to take place in  
2     the next few weeks is to try and streamline that process,  
3     taking into account the current level of resources and where  
4     we need to maximize them. It's for that reason that we'd  
5     like to commend the APOA for being a constructive partner  
6     here and offering a lot of thoughtful insight into how that  
7     process should change. And so we appreciate their input  
8     into the process. I think, when Dr. Ginger presented his  
9     proposal, it really dovetailed with what work needs to take  
10    place in the next few weeks.

11           And so what we hope to present to you, Your  
12    Honor, is a real -- the big picture of sort of where we're  
13    going in the next six months. And that includes, as  
14    Mr. Schmehl has said, a changing of the mindset and the  
15    culture within the police department, having a monitoring  
16    process that works collaboratively with the City to increase  
17    the capacity within the agency to self-learn and improve,  
18    and then to pick up with the more traditional monitoring  
19    that is taking place for IMR-8.

20           And Your Honor, just to touch on the issue you  
21    raised about the outcome assessment, there needs to be a lot  
22    of work in revamp- -- in improving the City's data systems.  
23    And as you saw, Your Honor, in the first outcome report, it  
24    was limited because a lot of the information in that  
25    database was not usable or nonexistent. And so that's one

1 problem that needs to be fixed.

2 The other is that we do want to have enough  
3 information, once the City implements its new use-of-force  
4 process, where we can capture the outcome of that process.  
5 And there needs to be some time for the monitoring team to  
6 analyze that new data. And so the January 2019 date, we  
7 believe, is reasonable in light of the work that needs to be  
8 done to improve the data-collection system and to give the  
9 monitor -- the City time to implement its new processes, so  
10 that we can pick up that outcome data, and to give the  
11 monitoring team time to assess it.

12 DR. GINGER: And Your Honor, this is Jim Ginger.  
13 If I could add just one point. I'm sure the Court remembers  
14 the difficulty we had and described in the first outcomes  
15 assessment report in even obtaining data to work with that  
16 were valid and reliable. We made very specific  
17 recommendations in that report for changes that needed to be  
18 made to the database that collected this data and the way in  
19 which the data were provided to the monitoring team. Quite  
20 frankly, I have no doubt -- I have no tangible proof, but I  
21 have no doubt that those recommendations were not acted on  
22 until or before the new administration took effect. So that  
23 leaves that workload, which is substantial. It's not --  
24 it's not minor by any nature. It was just ignored by the  
25 previous administration. It will probably take me a week or

1 so to bring the new administration up to speed on what is  
2 meant by the recommendations I left in that initial outcome  
3 assessments report.

4 So that -- and that's not unusual. That tends to  
5 be the case with these processes. The development of  
6 effective data collection and data maintenance is always a  
7 problem. It's even more so with APD. And the new databases  
8 that need to be developed have been discussed with the  
9 City's data manager. He remains a holdover from the old  
10 administration, and I think that's a good thing because,  
11 (a), there's some continuity there and, (b), it was clear to  
12 me, from my standpoint as monitor, that this individual had  
13 been giving the City good advice; it was just simply being  
14 ignored. He's a very competent fellow. He knows his stuff.  
15 He's easy to work with. But there's going to be a pretty  
16 intensive period of time where he and I just need to sit  
17 down and talk about what I meant in those specific  
18 recommendations and how APD might best respond to those  
19 recommendations.

20 And so I support this request for an extension,  
21 mainly because the databases that need to drive the next  
22 outcomes assessment report are, at this point, not capable  
23 of doing it. So we're going to need to fix the databases  
24 before we can develop a new report -- collect the data,  
25 analyze it, and develop a new report.

1           THE COURT: And Mr. D'Amato, the rank-and-file,  
2     how do they feel about delaying the compliance plan,  
3     delaying the -- the mini reports, I mean, and the outcome  
4     assessments? What do they think?

5           MR. D'AMATO: So with the present administration  
6     and the command staff, what's not being said, but underlying  
7     the entire change, is a matter of trust. Prior continuances  
8     by the previous administration with respect to the  
9     compliance plan may have been a disingenuous request to the  
10    parties. The membership here believes that this request for  
11    an extension is made in good faith. And that belief is  
12    based upon the actions of the administration and the new  
13    command staff. So because the trust is so important and the  
14    ability to actually see action that bespeaks the trust,  
15    we're in favor of the extension.

16           Let me first tie that into the no IMR-7.  
17    Everyone, right now, is in a very cooperative and a very  
18    communicative mood to get things done. I believe that we're  
19    not all on the same page, but at least we're all on the same  
20    chapter of the same book. I think it's in the best interest  
21    of the City not to have an IMR-7 because that would reflect  
22    a past administration that is no longer -- or a past  
23    philosophy that is no longer relevant. And I think the two  
24    mini reports, whether you label them as, you know, "IMR-7,  
25    the first half," and "IMR-7, the second half," March and May

1       respectively, that would more accurately capture the present  
2       mood and activities of the parties and the City.

3               Something that should be advised to you, Your  
4       Honor, is the effect on the community. If they perceive no  
5       IMR-7 as a deceptive maneuver or the same old stuff of delay  
6       with no activity, that's not good for this new  
7       administration. But if they see two mini reports that  
8       accurately reflect the reality of what's going on, that  
9       would serve to enhance the trust and belief in the new  
10      administration.

11             I say that because, one night this week,  
12      Dr. Ginger and his team, along with Director Harness and the  
13      City attorneys, APOA membership officers met with the  
14      Civilian Police Council, directors and some members. And it  
15      was almost like if you could make a painting to show the new  
16      spirit of mission-oriented compliance from all quarters; it  
17      was a very positive thing to see. So I think no IMR-7, as  
18      Jeramy said, is not that fatal, as long as the mini reports  
19      address the current activity.

20             So we're all in favor, the APOA is all in favor  
21      of the extension.

22             THE COURT: Well --

23             MR. D'AMATO: Thank you.

24             THE COURT: -- yes, sir, thank you.

25             You know, Mr. D'Amato, your remarks just then

1       were encouraging to me. And I assume reflective of  
2       everyone's position at this point that, as we're moving  
3       forward with a new cast of characters and, you know, the --  
4       all of the different metaphors that we've used -- "reset  
5       buttons" -- that trust is merited until it's abused. And  
6       we -- I think, as we begin, we have to assume good faith on  
7       the part of the new administration, the new command staff.  
8       And gosh, I'm hoping for -- I'm hoping that this isn't just  
9       a honeymoon period, but rather the beginning of a very  
10      positive step by way of winding down this process.

11               What we didn't talk about on Number 3 when we  
12      discussed the potential of the mini reports in March and  
13      May, I think the calendar -- and Dionna, you're there, I  
14      think, aren't you?

15               LAW CLERK: I am, Judge.

16               THE COURT: I'm looking for the calendar coming  
17      up for dates ahead. Didn't we have a public hearing  
18      scheduled in May --

19               LAW CLERK: We do.

20               THE COURT: -- right? So obviously, we need to  
21      think in terms of that. If IMR-7 is going to be -- not  
22      "eliminated," but just reduced to the two mini reports, we  
23      need to think about to the extent which we have a public  
24      hearing and when, because, Mr. D'Amato, picking up on a  
25      point you just made, the last thing we want is for the

1 public to view the extensions we perceive as necessary,  
2 given, you know, the learning curve for the new  
3 administration, as being just the same old thing; you know,  
4 we're just kicking the can down the road. We can't have  
5 that. We have to avoid that perception, it seems. So I  
6 think, given what I've heard, I will favorably consider the  
7 request that's going to be made in soon-to-be-filed motion  
8 practice on the compliance plan.

9 And let me hear from acting City Attorney  
10 Ms. Hults about the City Council's current resolution, or  
11 the Resolution 17-252.

12 MS. HULTS: Samantha Hults on behalf of the City  
13 of Albuquerque. I'm actually going to defer the  
14 introduction and kind of report over to Jerry Walz, who is  
15 acting in a limited capacity as the City Council's attorney  
16 for this matter.

17 THE COURT: Thank you.

18 Mr. Walz?

19 MR. WALZ: Thank you very much, Your Honor. I'll  
20 be glad to address that issue regarding the City's limited  
21 resolution.

22 First of all, let me tell you what the resolution  
23 is not. And the city councilors I met with warned me to  
24 make this very clear to the Court, that this was not an  
25 attempt to circumvent, in any manner, the process that is

1 ongoing, to circumvent the Court's authority, or to  
2 undermine Dr. Ginger in any manner. Rather, the action was  
3 taken independently of the City Attorney's Office; hence,  
4 that's why I'm representing the City Council on this as an  
5 accountability measure to the taxpayers of the City of  
6 Albuquerque and the non-taxpayers, alike, so that they -- as  
7 the Court was indicating, there needs to be confidence in  
8 the system and the system is working.

9 On top of that, we know from Doc. 114, which is  
10 the Court Order that sets forth the parties' stipulation  
11 regarding terms and conditions of the independent monitor's  
12 payment, that the budget is to be developed. And it also  
13 provides documents that can be obtained and reviewed by the  
14 City to be sure that the appropriate payments are being  
15 made. Importantly, Your Honor, we have a new fiscal year  
16 coming up in terms of -- it's hard to believe that we're  
17 going to be going into 2000 -- having to start thinking  
18 about this next year, 2019. And we need to start working on  
19 budgetary issues to be sure that, (a), the proper assessment  
20 can be made by the City Council as to what type of  
21 appropriations need to be made; that the appropriate  
22 resolutions or ordin- -- or resolutions, I'm sorry, be  
23 advanced, and that the appropriate budgets be passed by the  
24 City Council and approved by the mayor. So there's a lot of  
25 work to be done here.

1           Now, I'm glad to state that, yesterday, we had a  
2       very productive meeting. Ms. Hults was also a participant  
3       in that meeting with Luis Saucedo and with Elizabeth  
4       Martinez to discuss some of the mechanics of these issues on  
5       how to do this. And we do not have a formula carved out,  
6       but Ms. Martinez was hopeful that in early February that we  
7       could work out some type of approach as to how to perform  
8       some of these auditing measures. We certainly do not want  
9       to run afoul, and we will not run afoul, of anything that is  
10      being done by DOJ or by the Court, but the City does need to  
11      have measures in place, as with any governmental entity, to  
12      be able to perform their own auditing measures.

13           So Your Honor, that was the whole purpose of  
14      that. I know the Court was also concerned about the timing  
15      that occurred regarding this resolution. The City Council  
16      also wanted to make it very clear that the City Council had  
17      no idea about any movement or releases from the City  
18      Attorney's Office relating to any of that tape-recorded  
19      business that the Court heard about in November. This was  
20      not done in conjunction with any other activity to try to  
21      discredit the monitor or the process.

22           So the City Council has been and continues and  
23      will continue to work in good faith. We'll meet with  
24      Ms. Martinez, Mr. Saucedo, and the DOJ team to work in an  
25      orderly fashion and try to get something to the Court's

1 attention by early February. And with the Court's  
2 permission, I'd like Ms. Martinez to maybe add further  
3 comment to my remarks.

4 THE COURT: Yes, sir. Thank you.

5 Ms. Martinez?

6 MS. MARTINEZ: Yes, Your Honor. Your Honor, I  
7 believe that part of the problem that we have had with  
8 respect to the City Council's need for information here is  
9 that, from the beginning, it is unfortunate that the City  
10 Council has never had a clear understanding about what its  
11 role in this process is. I believe that the prior  
12 administration never adequately and appropriately informed  
13 the Council about its role or about Dr. Ginger's role in  
14 this process. And I appreciate the fact that the current  
15 administration is making efforts to ensure that they have  
16 adequate information and are appropriately advised.

17 I am sure that the Court will recall, and I have  
18 let Mr. Walz and Ms. Hults know, that we will pull this  
19 information together for them. But early on in this  
20 process, this was an issue that came before Court. The City  
21 Council did want Dr. Ginger to come before them and respond  
22 to them, answer their questions, appear before them in  
23 council. And as the Court is aware, the Department of  
24 Justice was concerned about this. Dr. Ginger is the Court's  
25 monitor. He answers to the Court. He speaks primarily

1 through his reports. We believe it's very, very important  
2 that everybody respect the fact that he answers to the Court  
3 and that his position not become politicized.

4 As the Court will recall, this became an issue  
5 that was discussed at several status conferences. And we  
6 worked with the City and the monitor and we brought before  
7 the Court several avenues by which the monitor could provide  
8 information to the Council on an ongoing basis. And those  
9 avenues were made available to the Council. There are --  
10 there were a couple of councilors, actually, one in  
11 particular, who regularly availed herself of those avenues.  
12 And we will work with Mr. Walz and the acting City Attorney  
13 to make sure that those avenues and perhaps others are  
14 available.

15 We recognize that, as Year Four, the current  
16 order will come to an end at the end of this year, and that  
17 the City and Dr. Ginger will discuss a payment arrangement  
18 for next year and the Court will enter a new order for his  
19 remuneration, but it will be necessary for the City and the  
20 Council to obtain information that it will be important for  
21 the Council to -- and the City to receive information from  
22 Dr. Ginger. And we will make sure that there is the ability  
23 for the Council to receive that information in an  
24 appropriate way.

25 We will work, in the next couple of weeks, to

1     come up with a proposal that works for the City and the  
2     Council and Dr. Ginger. And we will endeavor to have the  
3     proposal to the Court during the February 8<sup>th</sup> status  
4     conference, and have the Court consider it and let us know  
5     whether it meets with the Court's approval.

6             Thank you, Judge.

7             THE COURT: Yes, ma'am. Thank you.

8             Dr. Ginger, do you want to be heard on this  
9     issue?

10            DR. GINGER: Your Honor, I wouldn't have much to  
11     add to that, except to say that I have been exceptionally  
12     careful to manage the funds that are available to us as a  
13     monitoring team on this process to the point that I realize  
14     the -- well, in some cases, deliberate lack of compliance  
15     that I was getting from the City was going to lead to  
16     extended costs downline. In other words, things that we  
17     should have already had done and should already be in  
18     compliance haven't been done and were not in compliance, so  
19     that moves costs downstream.

20            I was able to manage that internally by reducing  
21     the amount of compensation for myself and some key staff.  
22     And that, I think, has built up enough of a cushion for us  
23     to make it through this new transition, to make it through  
24     to the time that we'll have to spend spinning up new staff,  
25     new command staff, and new APD staff. So as things stand

1 right now, if we move to this -- this process outlined in  
2 the way-forward documentation that we're working on, we're  
3 able to get to Year Four in budget. And then that means  
4 that, Year Five, which is not covered by this current  
5 agreement, will have to be renegotiated, compensation will  
6 have to be renegotiated. And that Year Five will depend, to  
7 a great extent, on the level of cooperation we receive from  
8 the City in terms of -- you know, when we request data, we  
9 get it and it's in a usable format that we can access it and  
10 manipulate it. In other words, it's not provided by Xerox  
11 copies that we have to then reenter into another database.

12 So if we -- by getting those issues -- first of  
13 all, by anticipating those issues, given the level of  
14 cooperation we were receiving early on, we've managed to put  
15 a little bit of a nest egg away that's going to get us  
16 through this rough spot for the next year. And if the level  
17 of cooperation we have from the City right now continues,  
18 then that will reliably inform any kind of budget  
19 consideration that we have to make for Year Five. So we  
20 should be able to negotiate that with the City clearly and  
21 above board, so that everybody understands, (a), the level  
22 of cooperation doesn't change and, (b), our scope of duties  
23 don't change. And I think we're going to be able to make  
24 the transition fairly effectively because of that.

25 THE COURT: Well, thank you.

1           The agenda suggests that Mr. D'Amato might have  
2 something to add here as well?

3           MR. D'AMATO: I think, at this point, the APOA  
4 will defer to the Court on any ultimate action it takes with  
5 respect to the City's motion and the City Council's actions.  
6 At this time, I think it should play out the way the parties  
7 and City Council have desired it to play out. I think it  
8 will resolve itself, ultimately, so we're not going to take  
9 a position on it, Your Honor.

10           THE COURT: Thank you. I'll look forward to  
11 further updates on the City Council's resolution. And the  
12 City Council needs to understand that, going forward, I'm  
13 not holding any misgivings about their action or their -- or  
14 the timing of it. In November, it suffered from the  
15 unfortunate coincidence, you know, with the other matters  
16 that caught my attention. But there's got to be  
17 accountability, transparency. We all understand that.  
18 Dr. Ginger certainly does. So I'll just appreciate you-all  
19 keeping me posted on that.

20           Number 5, Dr. Ginger, are you going to take the  
21 lead on reports relating to the CPCs?

22           MR. WALZ: Your Honor, this is Jerry Walz.  
23 Before we move on, may I be excused at this point? I was  
24 brought in only for the limited purpose of this report and  
25 to hear what the Court had to say on this City Council

1 budgetary issue. I'm not involved in the others. And as a  
2 cost-saving measure, if I could be excused at this point,  
3 I'd be -- it would be appreciated.

4 THE COURT: Without objection, I'm glad to let  
5 you go. And thank you for your appearance, Mr. Walz.

6 MR. WALZ: Thank you very much, Judge Brack.  
7 Thank you to all the parties as well.

8 THE COURT: Dr. Ginger, about the meeting with --  
9 there was some reference to this a moment ago, but tell me  
10 about your meeting with the CPCs.

11 DR. GINGER: Well, we had the CPC meeting last  
12 night. And first of all, I have to say that virtually the  
13 entire command staff was present at that meeting. And  
14 that's the first time in my tenure here that I've seen a  
15 strong representation at a CPC meeting by APD command staff.  
16 The chief was there. Most of the deputy chiefs were there.  
17 All but one, I'm informed. And that marked a sea change.  
18 And you know, some small things add up to really, really big  
19 things in the grand scheme of things. And the fact that  
20 Chief Geier brought his command staff to that meeting and  
21 made himself and them available to the CPC members was  
22 important. It was incredibly important. In the past three  
23 years, I can only recall one time when the former chief  
24 showed up at one of those meetings. So to me, that was a  
25 major indication of a sea change and really exhibiting an

1 understanding of how modern policing works and integrating  
2 the policing process with its community.

3 So I took that as a watershed event. Every,  
4 every indication I get from this new administration -- and  
5 I've spoken with the mayor on down -- is that they are  
6 absolutely committed to community outreach, community  
7 involvement, and listening to what the community has to say.  
8 So we'll continue to monitor that. One event doesn't a  
9 trend make, but I thought it was remarkably telling. And I  
10 could tell from the mood in the room, so to speak, that I  
11 wasn't the only one that had made that connection, about  
12 that amount of attendance from key command staff members at  
13 a CPC council. So I thought that was -- it went very well  
14 last night, and I think Chief Geier got off to a great  
15 start.

16 THE COURT: Well, that's more good news.

17 Ms. Martinez, did you want to be heard on that  
18 issue?

19 MS. MARTINEZ: Your Honor, this was a meeting as  
20 opposed to a summit. As the Court has previously heard from  
21 us, the head -- the executive director of the Civilian  
22 Police Oversight Agency has instituted a practice of  
23 convening quarterly CPC summits, which have been a terrific  
24 forum for the CPCs to work together, to feed off of each  
25 other, and to just -- actually, I think, up until now,

1 really to commiserate with the problems that they have been  
2 experiencing in terms of the lack of support and the lack of  
3 cooperation that they have been receiving from the City and  
4 the Department.

5 And the CPOA, I think, as a police oversight  
6 board, have -- had been providing an anchor for the CPCs.  
7 And so what we have had up until now is Ed Harness really  
8 providing an anchor for them. And he and the Associate  
9 Monitor for Community Engagement, Steve Rickman, who  
10 often -- well, would call into the summits. And when the  
11 monitoring team is in town, they serve as the moderators for  
12 the summits.

13 We did not have a summit last night, because the  
14 mayor asked us not to do that. Mayor Keller said that --  
15 because he was out of town, he requested that we not have a  
16 summit because he has asked that he be present for summits.  
17 Going forward, he wants to be able, personally, to  
18 participate in summits. And so instead of having a summit,  
19 we convened a meeting that was hosted by our acting U.S.  
20 Attorney, Jim Tierney. So I believe that the mayor's  
21 personal interest in wanting to participate in the summit  
22 also demonstrates the -- this significant change in the new  
23 administration's response to this reform process.

24 Yes, we had the new police chief and his command  
25 staff here. I believe that the reason we did not have the

1 Chief Administrative Officer and the acting City Attorney  
2 here for that meeting was because both of them were at the  
3 City Council meeting last night. That is why they did not  
4 attend. But otherwise, we did have Mr. Schmehl here and we  
5 did have, as I said, Mr. Harness here. We had the  
6 chairwoman of the POB and two members of the POB who  
7 participated also. Most, but not quite all, of the members  
8 of the six CPCs were here. It was a really terrific  
9 gathering. And while they did explain the issues that they  
10 had had in the past over the last three years, the optimism  
11 that was expressed and the changes that they already have  
12 seen in just a month and a half were discussed. They were  
13 introduced to the new Community Policing Council manager,  
14 who just came on board a month and a half ago. We are very  
15 excited to have him on board. He is someone who is familiar  
16 with the Albuquerque community. He is the former policy  
17 analyst for Councilor Diane Gibson, who is someone who has  
18 been very interested and involved in our reform process from  
19 the beginning.

20           So we feel like this was a very positive meeting.  
21 And just so the Court is aware, while we did not  
22 specifically discuss it as -- in the form of the  
23 communication that the Court has been receiving from  
24 community members, we discussed the general subject matter  
25 of those communications. And generally, the communications

1 that the Court has been receiving from community members  
2 relate to the lack of support that the CPCs have been  
3 getting from the City, the lack of administrative support.  
4 And we believe that, over time, they will be receiving that  
5 support.

6 Often it's, "Why aren't your minutes posted? Why  
7 don't we know who your members are? Why don't we know what  
8 the terms of office are? Why don't you have your bylaws  
9 posted?" And the fact of the matter is that the CPC members  
10 are volunteers. They do not have access to the City's  
11 website. They cannot do these things themselves. They do  
12 not have administrative support to do that. Those are  
13 matters that are being corrected.

14 We see the wherewithal, we see the interest, and  
15 we see the dedication all there. There is a lot that has to  
16 be done. It just can't happen overnight, and it's just  
17 going to take time, Judge. And a lot of our community  
18 members expect the changes to happen now. I know that our  
19 CPC members know that it will take time. And we're very,  
20 very fortunate that they're going to hang in there.

21 THE COURT: Ms. Martinez, thank you for the  
22 positive report.

23 How about Mr. Schmehl?

24 MR. SCHMEHL: Yes, Your Honor. Thank you.  
25 Ms. Martinez covered a lot of my bases there, but I will

1 just reiterate that the administration is committed to this  
2 type of community dialogue. It's absolutely necessary. You  
3 can't police through silence. I think there has to be that  
4 dialogue. And Mr. Sylvan, Chris Sylvan, who was appointed  
5 by the administration in that manager position because it  
6 was known that he was able to bridge those gaps and he had a  
7 productive relationship with community through his work with  
8 Councilor Gibson.

9 THE COURT: Very good.

10 Mr. D'Amato?

11 MR. D'AMATO: Thank you, Your Honor. I can't add  
12 anything other than what others have indicated to you about  
13 last night's meeting. It's a -- it's -- it's a large step  
14 forward, again, going to the point of trust and  
15 communication with the community is essential for this thing  
16 to work. And I think we made a big step last night. I  
17 thank Director Harness and the City appointing Chris Sylvan.

18 THE COURT: Well, I'd like to add my thanks to  
19 Chief Geier. Is he on the phone today?

20 MR. SCHMEHL: No, Your Honor.

21 THE COURT: Well, please make it a point to pass  
22 along my thanks to him and his command staff for being  
23 conscientious and proactive and understanding the need for  
24 the public outreach, the public buy-in that we need so  
25 desperately to make this work. It's a great start, and I

1 really appreciate his involvement.

2 Number 6, the City's anticipated disclosures of  
3 recordings. Ms. Hults?

4 MS. HULTS: Good morning, Your Honor. I get the  
5 fun one at the end.

6 I just wanted to be able to appear before the  
7 Court and to notify the Court of some IPRA requests that we  
8 received for the additional recordings. I know that we  
9 filed a notice to the Court about those additional  
10 recordings. There was a release made this week to two  
11 separate requesters regarding those audio recordings, and we  
12 have received another one this morning.

13 So we are complying with the State IPRA Act, but  
14 we want to keep you, Your Honor, and the parties aware as we  
15 get these requests, so that way, you are informed and know  
16 that the information has been released, or is being  
17 released.

18 THE COURT: Ms. Martinez, did you want to be  
19 heard on this?

20 MS. MARTINEZ: Your Honor, the United States only  
21 wants to let the Court know that we were relieved to learn  
22 that the new administration took prompt steps to stop the  
23 practice of this surreptitious recording when they learned  
24 about it. We were relieved to learn that they notified the  
25 parties and the monitor when they learned about the

1 recordings. And we were reassured by the measures that they  
2 took to prevent this practice from reoccurring in the  
3 future. And we are committed to working with the new  
4 administration on the course corrections that have had to  
5 take place to make sure that the police department is able  
6 to address the detrimental impact that this has had on the  
7 reform process. And on the Department.

8 THE COURT: I'm going to have something to say  
9 about all of this in just a moment, but Mr. D'Amato?

10 MR. D'AMATO: I'm reminded of a scene out of  
11 *Casablanca*. It's like feigned shock, but again, I am really  
12 big on not bringing over the negative aspects of the  
13 previous administration that may act as a damper on the  
14 positive aspects of the new administration. So I'm happy  
15 with what the City is doing. We'll have to suffer through  
16 the public perception and reassure them in every way that we  
17 can that this is not the way we do business today.

18 THE COURT: And thank you, Mr. D'Amato.

19 I've had very recent -- very recent occasion to  
20 recall the inspector and the shock he expressed in  
21 *Casablanca*.

22 Dr. Ginger?

23 THE DEFENDANT: I would have nothing to add  
24 beyond Mr. D'Amato's comments, Your Honor. I think this is  
25 best left where it was. And we're continuing to focus on

1 the future, as you can tell from the way-forward document.  
2 It's a nonentity with the monitoring team at this point.

3 THE COURT: Well, thank you for that.

4 Ms. Hults, I, too, was relieved to read about the  
5 new administration's approach and rejection of such things.  
6 And I -- I understand that they -- the recordings will be  
7 made public. And that's consistent with, I think, what IPRA  
8 requires, and my earlier decision.

9 I received a call yesterday from someone in the  
10 news media. And I've forgotten now his name -- was it Chris  
11 McKee? Is that right, Dionna?

12 LAW CLERK: That sounds right. I'm getting on my  
13 e-mail right now to check. Yes, sir, Chris McKee from KRQE  
14 News 13.

15 THE COURT: Right. He sent an e-mail directly to  
16 my office. And the gist of it was, "Are these things going  
17 to be released?" And you've all answered that this morning.  
18 But then he asked whether I had any intention of pursuing  
19 sanctions against prior officials in the administration or  
20 whether I thought sanctions, you know, were appropriate  
21 against the new administration as the successor  
22 administration. And I've not responded to him and don't  
23 intend to, other than by way of this:

24 I'm letting you-all know I have no interest in  
25 looking back. My shoulder's to the wheel and my hand is on

1 the plow. I am looking forward with all of you and I have  
2 no intention of pursuing sanctions against the prior  
3 administration, and I certainly don't think the successor  
4 administration has any accountability on that score. So  
5 this is a -- this is a public hearing, I know. I'm glad for  
6 that information to be out. But that's my response to his  
7 question.

8               So I'm sorry that we started late this morning.  
9 My morning docket went much longer than I had expected. And  
10 that's no one's fault but my own, but I do appreciate  
11 everyone's participation this morning. But more than that,  
12 I really appreciate everyone, everyone's willingness to take  
13 a fresh look into and to "reset," as we keep overusing that  
14 metaphor. I appreciate the pronouncements that I've seen  
15 from Mayor Keller and the evidence of good faith and a  
16 really willingness to make this process work for the  
17 betterment of the City and the people of Albuquerque, as  
18 evidenced by the chief's appearance at the meeting of the  
19 Community Policing Council last night. Those are all  
20 just -- we're off to a great start.

21               And Dr. Ginger, he's a math guy, he's a -- you  
22 know, a metrics guy. He was quick to acknowledge a moment  
23 ago that, you know, "one event doesn't a trend make," but I  
24 like what I see and I appreciate everyone's involvement.  
25 And we'll look forward to some motions practice, I guess, in

1 just the next few days.

2 Is there anything else I can help you-all with  
3 this -- well, this afternoon?

4 LAW CLERK: Judge, this is Dionna.

5 THE COURT: Yes.

6 LAW CLERK: Our March date, did you see the note  
7 that you were scheduled to be out of town?

8 THE COURT: I did. Right. I think our status  
9 conference for March is set for the 7<sup>th</sup> or 8<sup>th</sup> --

10 LAW CLERK: 8<sup>th</sup>, sir.

11 THE COURT: I'm going to be out of town on those  
12 dates. And I would propose to move it to the next week.  
13 I'd be glad to hear you-all about whether your schedules  
14 will allow that move.

15 Did everybody go to lunch?

16 MS. MARTINEZ: Yes, Your Honor, it works for the  
17 United States.

18 THE COURT: Great. Thank you, Ms. Martinez.

19 DR. GINGER: That's acceptable to the monitor,  
20 Your Honor.

21 MR. SCHMEHL: And that works for the City, Your  
22 Honor.

23 MR. D'AMATO: As well as the APOA.

24 THE COURT: Perfect. Jessica will get a notice  
25 out about that. We are still on for February at our -- what

1 date is that, Dionna?

2 COURT CLERK: The 8<sup>th</sup>.

3 THE COURT: The 8<sup>th</sup>. So February 8<sup>th</sup>, same  
4 time, same station.

5 Thank you-all again. And I just wish you and the  
6 process well as we move forward. Thanks a lot. Have a  
7 great afternoon.

8 (The proceedings concluded at 12:19 P.M.)

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1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

3  
4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official  
6 Court Reporter in and for the United States District Court  
7 for the District of New Mexico, do hereby certify that  
8 pursuant to Section 753, Title 28, United States Code, that  
9 I did report in stenographic shorthand to the best of my  
10 skill and ability the foregoing pages 1-42 of the  
11 proceedings set forth herein, that the foregoing is a true  
12 and correct transcript of the stenographically recorded  
13 proceedings held in the above-entitled matter and that the  
14 transcript page format is in conformance with the  
15 regulations of the Judicial Conference of the United States.

16  
17 Dated this 18<sup>th</sup> day of January 2018.

18  
19 S/Electronically Filed  
20 Vanessa I. Alyce, RPR, NM CCR #259  
21 Federal Official Court Reporter  
22 100 N. Church Street  
23 Las Cruces, NM 88001  
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